



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

Docket No. 121210694-3514-02

RIN 0648-XC392

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the annual catch limit (ACL), harvest guideline (HG), and associated annual reference points for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2013, through December 31, 2013. These specifications were determined according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2013 maximum HG for Pacific sardine is 66,495 metric tons (mt). The initial overall commercial fishing HG, which has been distributed across the three allocation periods for sardine management, is 57,495 mt. This amount has been divided across the three seasonal allocation periods for the directed fishery the following way: January 1-June 30—19,123 mt; July 1-September 14—21,998 mt; and September 15-December 31—13,374 mt with an incidental set-aside of 1,000 mt for each of the three periods. This rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Effective [insert date 30 days after date of publication in the FEDERAL REGISTER] through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: NMFS issues this rule under authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. During public meetings each year, the estimated biomass for Pacific sardine is presented by NMFS scientists to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species (CPS) Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel), and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL), available biological catch (ABC), annual catch limit (ACL) and harvest guideline (HG), along with recommendations and comments from the Team, Subpanel, and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to the National Marine Fisheries Service (NMFS).

After review of the Council's recommendations and public comments, NMFS implements through this rule the 2013 ACL, HG, and other annual catch references, including the OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework in the

FMP. This framework includes a harvest control rule that determines the maximum HG, the primary management target for the fishery, for the current fishing season. The HG is based, in large part, on the current estimate of stock biomass. The harvest control rule in the CPS FMP is  $HG = [(Biomass - CUTOFF) * FRACTION * DISTRIBUTION]$  with the parameters described as follows:

1. Biomass. The estimated stock biomass of Pacific sardine age one and above for the 2013 management season is 659,539 mt.

2. CUTOFF. This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. DISTRIBUTION. The average portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent.

4. FRACTION. The harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

At the November 2012 Council meeting, the Council adopted the 2013 Stock Assessment of the Pacific sardine resource completed by NMFS Southwest Fisheries Science Center and the resulting Pacific sardine biomass estimate of 659,539 mt. Based on the framework in the CPS FMP and recommendations from its SSC and other advisory bodies, the Council recommended and NMFS is implementing, an OFL of 103,284 mt, ABC of 94,281 mt, an ACL of 94,281 mt (equal to the ABC) and a maximum HG (HGs under the CPS FMP are operationally similar to annual catch targets (ACT)) of 66,495 metric tons (mt) for the 2013 Pacific sardine fishing year. Due to an approximately 33 percent decrease in the biomass estimate from 2012, the result of the HG formula is approximately 40,000 mt less than the 2012 HG. As described above,

annual biomass estimates are a parameter of the various harvest control rules, therefore as estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels, such as the HG, will necessarily decrease or increase too. These catch specifications are based on the most recent stock assessment and the control rules established in the CPS FMP.

The Council also recommended, and NMFS is implementing, a reduced initial overall commercial fishing HG of 57,495 mt allocated across the three allocation periods for sardine management. This number has been reduced from the maximum HG of 66,495 mt by 9,000 mt: (i) for potential harvest by the Quinault Indian Nation of up to 6,000 mt; and (ii) 3,000 mt, which is initially reserved for potential use under an exempted fishing permit(s) (EFPs). The Council also recommended and NMFS is implementing that incidental catch set asides be put in place for each allocation period. The purpose of the incidental set-aside allotments and allowance of an incidental catch-only fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, when a seasonal directed fishery is closed. The intent of this measure is to reduce bycatch of Pacific sardine in other CPS fisheries and allow for continued prosecution of these other important fisheries that may incidentally catch sardine if and when the sardine fishery is closed.

For the 2013 Pacific sardine fishing season, the incidental set asides and adjusted directed harvest levels for each period are shown in the following table in metric tons:

	January 1- June 30	July 1- September 14	September 15 – December 31	Total
Total Seasonal Allocation	20,123 (35%)	22,998 (40%)	14,374 (25%)	57,495
Incidental Set Aside	1,000	1,000	1,000	3,000

Adjusted Directed Harvest Allocation	19,123	21,998	13,374	54,495
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The 2013 HG is already well below the ACL, and additional inseason accountability measures are in place to ensure the actual catch levels never exceed the HG. If during any of the seasonal allocation periods the applicable directed harvest allocation is projected to be taken, fishing will be closed to directed harvest and only incidental harvest would be allowed. For the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set-aside. As an additional accountability measure, the incidental fishery will also be constrained to a 40 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine and reduce potential discard of sardine. In the event that an incidental set-aside is projected to be attained, the incidental fishery will be closed for the remainder of the period. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period will automatically be adjusted upward or downward accordingly to account for the discrepancy. Additionally, if during any seasonal period the directed harvest allocation is not fully attained or is exceeded, then the following period's directed harvest total will be adjusted to account for the discrepancy as well.

If the total HG or these apportionment levels for Pacific sardine are reached or are expected to be reached, the Pacific sardine fishery will be closed until it re-opens either the next period per the allocation scheme or at the beginning of the next fishing season. The NMFS Southwest Regional Administrator will publish a notice in the Federal Register announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure that the regulated community is informed of any closure, NMFS

will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

At the March 2013 Council meeting, the Council approved and subsequently made a recommendation to NMFS to approve an EFP for all of the 3,000 mt EFP set-aside. NMFS will likely make a decision on whether to issue an EFP for Pacific sardine sometime prior to the start of the second seasonal period (July 1, 2013). Any set-aside attributed to an EFP designed to be conducted during the closed fishing time in the second allocation period (prior to September 15), but not utilized, will roll into the third allocation period's directed fishery.

As explained in the proposed rule, 6,000 mt of the HG is being set aside for use by the Quinault Indian Nation. NMFS will consult with Quinault Department of Fisheries staff and Quinault Fisheries Policy representatives at the end of the second allocation period to determine whether any part of this set-aside is available for transfer into the non-tribal directed fishery.

Detailed information on the fishery and the stock assessment are found in the report "Assessment of the Pacific Sardine Resource in 2012 for U.S. Management in 2013" (see ADDRESSES).

On January 31, 2013, NMFS published a proposed rule for this action and solicited public comments (78 FR 6794). NMFS received multiple comments from one commenter regarding the Pacific sardine annual specifications.

Comment 1: The commenter requested that NMFS disapprove the proposed action because the annual catch limit, harvest guideline (HG), and associated reference points such as the OFL, do not reflect the best available science for setting catch levels

and will result in catch levels that fail to prevent overfishing, fail to achieve optimum yield (OY), are detrimental to the sardine stock as well as sardine predators and that ecological factors were not considered during the process of developing these specifications. Specifically, the commenter states that the value used for the  $F_{MSY}$  parameter in the OFL control rule for 2013 does not represent the best available information, questions the use of the mid-year biomass estimate from the stock assessment used to determine the 2013 catch levels, and suggests that the distribution parameter be revised because it does not reflect catch levels in Mexico and Canada. Additionally, the commenter questions the values used for the CUTOFF and FRACTION parameters of the HG control rule as well as the overfished criteria for Pacific sardine.

Response: The CPS FMP and its implementing regulations require NMFS to set an OFL, ABC, ACL and HG for the Pacific sardine fishery using the control rules set in the FMP. Reconsideration of the existing control rules and their parameters, as well as other aspects of Pacific sardine management such as overfished criteria, is beyond the scope of this rulemaking. However, in addition to responding to the comments about the 18%  $F_{MSY}$  parameter used in the OFL control rule, the mid-year biomass estimate used for setting 2013 harvest levels (OFL, ABC/ACL and HG), for information purposes only, NMFS will respond to some aspects of the comments that are beyond the scope of this action, such the distribution parameter used in the three control rules.

Disapproving this action, as requested by the commenter because of their perceived conservation concerns (as explained above), would allow the fishery to take place without any HG or quota. The HG and seasonal allocations, along with the OFL

and ABC, are the principal mechanisms for preventing overfishing of Pacific sardine and managing the fishery at a level that will achieve OY while allowing equitable access to all sectors of the fishery.

The commenter stated that the 2013 harvest levels do not achieve OY, do not prevent overfishing, and that ecological factors were not considered in the setting of the 2013 catch levels. With regard to OY, as described in the FMP, catch levels determined from the HG formula will result in OY. The 2013 HG (i.e., the directed fishing management target for the 2013 season) was determined using this HG formula. Directed commercial fishing is not allowed above this level and management measures are in place to prevent the fishery from exceeding it (i.e., in-season catch monitoring, in-season closures and incidental catch set-asides). As it relates to overfishing, the 2013 HG catch level is approximately 36,000 mt below the 2013 OFL, providing a large buffer against overfishing. This lower HG is the result of OY considerations, including ecological, and the management strategy in the CPS FMP that for 2013 establishes a catch level much lower than is needed to simply avoid overfishing or because of a risk of exceeding the ABC/ACL due to management uncertainty. These considerations and precautions are based on the environmentally driven dynamic nature of the Pacific sardine stock as well as its importance in the ecosystem as forage for other species. Additionally, the HG control rule explicitly protects the stock from approaching an overfished condition (while explicitly reducing fishing if biomass decreases) through the use of a 150,000 mt CUTOFF parameter (level at fishing is prohibited) that is three times that of the overfished level (50,000 mt). Although not the subject of this rulemaking, the commenter questions the values used for the CUTOFF parameter as well as the



overfished level. NMFS notes that the use of a CUTOFF parameter is not a requirement of the MSA or National Standard Guidelines and it is a proactive and precautionary policy choice of the CPS FMP to have an explicit rebuilding mechanism built into the control rule. With regards to the overfished level, it represents the best available science and is the level that on average can be expected to rebuild the stock in ten years.

Additionally, low biomass conditions for Pacific sardine may result from overfishing, unfavorable environmental conditions, or both acting in concert. Experience with CPS stocks around the world indicates that overfished/low biomass conditions usually occur when unfavorable environmental conditions and high fishing mortality rates occur at the same time. Management measures for sardine do not, however, depend on whether a low biomass condition was due to excess fishing or unfavorable environmental conditions, because reductions in fishing mortality are required in either case.

Furthermore, ecological factors such as the life-cycles, distributions, and population dynamics of the Pacific sardine, as well as their role as forage were considered and evaluated in developing the various control rules. Beyond the ecological factors used in the development of the control rules, other ecological information related to the annual management of CPS is presented to the Council through the annual CPS Stock Assessment and Fishery Evaluation which contains a chapter titled Ecosystem Considerations. In this chapter, information on climate and oceanographic conditions such as El Niño and the Pacific Decadal Oscillation are presented, as well as ecosystem trends and indicators relevant to CPS such as sea surface temperature, ocean productivity and copepod abundance. Additionally, NMFS also considered ecological information in its review of the 2013 Pacific sardine specifications through both the Environmental

Assessment (EA) and the Essential Fish Habitat consultation. The EA analyzed the effects of the proposed action on the environment, which included an examination of available ecosystem and predator/prey modeling efforts. NMFS is unaware of any additional ecological factors that warranted changes to the proposed 2013 Pacific sardine specifications.

Contrary to the opinion of the commenter, the 2013 Pacific sardine ACL, HG, and associated annual reference points are based on the best available science. As explained above under SUPPLEMENTARY INFORMATION, this year's biomass estimate used for the 2013 specifications went through extensive review, and along with the resulting OFL and ABC, was endorsed by the Council's SSC and NMFS as the best available science. As noted by the commenter, the SSC did recommend that future evaluations of the harvest control rules consider basing annual management on the biomass estimate from the stock assessment that aligns with at the start of the fishing year (currently management is based on the mid-year biomass estimate versus the end-year biomass from the stock assessment), however such a change has not been formally evaluated and the SSC did not recommend deviating from using the mid-year biomass estimate (which has been the practice for the last ten years) for management in 2013.

As it relates to the 2013 OFL, the commenter voiced concern with regard to the value (18 percent) used for the  $F_{MSY}$  parameter in the OFL and ABC control rules. The value of the  $F_{MSY}$  parameter used in the OFL and the ABC control rules is not prescribed in the FMP. The value used for 2013 of 18 percent represented the best available science and was endorsed by the SSC and NMFS. This value was also recommended as best available science for setting the 2012 annual specifications. Using 18% (the result of

modeling work in 2011) was recommended for both 2012 and 2013 as an alternative to the default option of applying the temperature-stock relationship that is used for determining the FRACTION parameter due to uncertainty surrounding this relationship. The default option would have resulted in an  $F_{MSY}$  of 19.85%. NMFS acknowledges that future work, particularly work involving sardine recruitment success and environmental variables, may provide alternative ways of estimating  $F_{MSY}$  for these control rules, however a new approach would need to be analyzed and then reviewed by the SSC, the Council, and NMFS before it could be used in management.

In the three control rules, the U.S. catch levels for Pacific sardine are prorated by an “estimate of the portion of the stock resident in U.S. waters” using a “distribution parameter” of 87%. This approach is laid out in the FMP itself, and is intended to account for the fact that some level of the sardine stock exists outside of US waters and can therefore be subject to harvest by fisheries in neighboring countries. The 87% was chosen based on the best information available, and in light of the absence of an international agreement governing management of Pacific sardine off the West Coast. The commenter however, inappropriately conflates stock biomass distribution with catch distribution. The distribution parameter, as defined in the FMP, is an estimate of the long-term average of the portion of total stock biomass occurring in U.S. waters, and is simply a way to prorate the biomass estimate used to calculate U.S. catch levels, it is not a prescription of actual catch levels by fishing vessels of the U.S., Canada and Mexico in any given year.

As part of the rationale presented by the commenter as to why the current value of 87 percent for the DISTRIBUTION parameter is incorrect, the commenter points to

sardine catch in Mexico and the fact that Mexico caught 51 percent of the total coastwide catch in 2011. The commenter states that because Mexico caught 51 percent of the total Pacific sardine catch that year, and this value exceeds 13 percent (the percent of total biomass assumed under the current default approach to occur outside U.S. waters), that the 87 percent biomass distribution used in the FMP is therefore incorrect. However, this rationale confuses the concepts of catch and biomass with other incorrect assumptions. For instance, the sardine control rules were not developed with the assumption that the entire sardine biomass is readily available to the U.S. fleet, that there are no other fishing restrictions, or that U.S. fishing restrictions match those of other countries. Obviously, these assumptions are not correct. For instance due to the seasonal allocation structure of the U.S. sardine HG and seasonal closures that occurred 2011 the U.S. fishery was only open for 83 days that year, while Mexico and Canada were not bound by this same restriction. The U.S. fishery is also bound by other restrictions such as limited entry and trip limits that likely reduce the total amount of sardines caught in U.S. waters. In fact, the U.S. only caught 34 percent of the total coastwide catch in 2011, which resulted in only a 5 percent stock exploitation rate by the U.S. Additionally, because of the migratory nature of the sardine stock and their movement between spawning grounds and feeding grounds, both of which change annually and seasonally, the biomass in any given year is not evenly distributed along the coast and therefore not equally available to any country or evenly distributed among specific fleet or port complexes within the U.S. Therefore, the 87% distribution parameter is not “incorrect” merely because it does not reflect catch levels between the three countries in any one year; it was neither intended to reflect catch levels nor keep total catches under a certain level as the commenter states.

Additionally, the commenter points to ongoing work by the NMFS Southwest Fisheries Science Center that is examining sardine stock structure along the west coast; along with potential ways to determine and differentiate the two subpopulations of Pacific sardine within landings in Southern California and Mexico. Although such research, as that referenced by the commenter, may eventually help distinguish the catch of the two sardine subpopulations, 87 percent still represents the best available science with regard to overall biomass distribution and is therefore appropriate for use in the sardine control rules.

NFMS recognizes that properly accounting for the trans-boundary nature of stocks, such as Pacific sardine, is difficult. The CPS FMP sets sardine harvest levels for U.S. fisheries by prorating the biomass used to calculate the target harvest level according to the portion of the stock estimated to be in U.S. waters on average over time. The primary advantage of prorating the total target harvest level is that U.S. fisheries can be managed unilaterally in a responsible manner that is consistent with the MSA. Although estimates of Mexican and Canadian landings are not considered explicitly in determining annual harvest levels for U.S. waters, landings and fishery data from both Mexico and Canada are used to assess the coastwide biomass. Therefore, because the allowable harvest level in U.S. waters ultimately depends on this biomass estimate, U.S. harvest will be reduced if the stock is depleted by fishing in either Mexico or Canada.

Finally, with regard to the commenter's concern that U.S. fishing levels exceed a combined United States, Mexico and Canada overfishing limit, this is unfounded because there is no such coastwise limit: Pacific sardine is not managed under an international agreement, and the FMP does not prescribe an international overfishing level. However,

NMFS will continue to monitor the total exploitation status of the stock to assess whether the stock is becoming overfished. Additionally, recent years' exploitation rates have been relatively conservative and well below levels that are likely to cause the stock to become overfished. The total international exploitation rate on the stock has averaged approximately only 13 percent over the last 10 years and in 2011 was about 15 percent, with U.S. annual exploitation rates averaging 7 percent since 2000; the 2011 U.S. exploitation rate was about 5 percent. Beyond prorating the biomass to calculate U.S. harvest, the Council and NOAA might consider alternative ways of accounting for the transboundary nature of the stock in the future.

Additionally, because sardine is a variable stock that undergoes extended periods of low and high biomass even in the absence of fishing, to help ensure Pacific sardine is not overfished, under the FMP's harvest policy whether sardine biomass decreases as a result of fishing pressure or environmental conditions, harvest in U.S. waters will automatically decrease as well. Because of this precautionary feature of the harvest control rule, the approximately 33 percent decline in biomass from 2012 to 2013, has resulted in a 60 percent decrease in the 2013 HG compared to 2012.

Comment 2: The same commenter also stated that the Environmental Assessment (EA) prepared for this action was inadequate because it should have included a greater range of alternatives, and because alternative methods for determining the annual specifications should be analyzed in an Environment Impact Statement (EIS).

Response: This year's specifications fall within the analysis in the EIS prepared for the CPS FMP under the National Environmental Policy Act. The EA completed for this action demonstrates that the implementation of the 2013 catch levels for the Pacific

sardine fishery based on the HG and ABC control rules in the FMP will not significantly impact the quality of the human environment. Therefore a new EIS is not necessary.

With regard to the scope and range of alternatives, the six alternatives analyzed in the EA was a reasonable number and covered an appropriate scope based on the limited nature of this action, which is described above. The six alternatives (including the proposed action) were objectively evaluated in recognition of the purpose and need of this action and the framework process in place based on the HG and ABC control rules for setting catch levels for Pacific sardine. The CPS FMP describes a specific framework process for annually setting required catch levels and reference points. Although there is some flexibility built into this process concerning determinations of scientific and management uncertainty, there is little discretion in the OFL control rules (level for determining overfishing), the ABC control rule (used to determine the ACL), or the HG control rule (level at which directed fishing is stopped), with the annual biomass estimate being the primary determinant in both these levels.

#### Classification

The Administrator, Southwest Region, NMFS, determined that this action is necessary for the conservation and management of the Pacific sardine fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule is exempt from review under Executive Order 12866.

The results of the Final Regulatory Flexibility Analysis (FRFA) completed for this action are below. For copies of the complete FRFA, please see the ADDRESSES section above. No issues were raised by public comments in response to the Initial

Regulatory Flexibility Analysis (IRFA) prepared pursuant to the Regulatory Flexibility Act for this action or on the economic impacts of the rule generally. As well as stated below, a description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble.

The purpose of this action is to implement the 2013 annual specifications for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an OFL, ABC, ACL and HG or ACT for the Pacific sardine fishery based on the specified harvest control rules in the FMP. A specific harvest control rule is applied to the current stock biomass estimate to derive the annual HG, which is used to manage the directed commercial take of Pacific sardine.

The HG is apportioned based on the following allocation scheme: 35 percent of the HG is allocated coastwide on January 1; 40 percent of the HG, plus any portion not harvested from the initial allocation is then reallocated coastwide on July 1; and on September 15 the remaining 25 percent, plus any portion not harvested from earlier allocations will be released. If the total HG or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery will close until either it re-opens per the allocation scheme or the beginning of the next fishing season. There is no limit on the amount of catch that any single vessel can take during an allocation period or the year; the HG and seasonal allocations are available until fully utilized by the entire CPS fleet.

The U.S. Small Business Administration defines small businesses engaged in fishing as those vessels with annual revenues of or below \$4 million. The small entities



that would be affected by this action are the vessels that compose the West Coast CPS small purse seine fleet. In 2012 there were approximately 96 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast; 55 are vessels in the Federal CPS limited entry fishery off California (south of 39° N. lat.), and a combined 23 vessels in Oregon and Washington's state Pacific sardine fisheries. The annual per vessel revenue in 2012 for the West Coast CPS finfish fleet was well below \$4 million and no vessels reported revenue of greater than \$4 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this action has an equal effect on all of these small entities, and there will not be any disproportionate impact on small entities.

The profitability of these vessels as a result of this action is based on the average Pacific sardine ex-vessel price per mt. NMFS used average Pacific sardine ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2012 fishing year approximately 105,000 mt were available for harvest by the directed fishery. Approximately 95,000 mt (21,000 in California and 74,000 mt in Oregon and Washington) of this HG were harvested during the 2012 fishing season, for an estimated ex-vessel value of \$20 million. Using these figures, the average 2012 ex-vessel price per mt of Pacific sardines was approximately \$208.

The directed commercial fishing HG for the 2013 Pacific sardine fishing season (January 1, 2013 through December 31, 2013) is 57,495 (mt). This HG is approximately 47,000 mt less than the directed commercial fishing HG for 2012. If the fleet were to take the entire 2013 HG, and assuming a coastwide average ex-vessel price per mt of

\$204 (average of 2011 and 2012 ex-vessel), the potential revenue to the fleet would be approximately \$12 million. Therefore, this action will decrease the affected small entities' potential profitability compared to last season, due to the lower HG this fishing season. However, although there will likely be a drop in profitability to sardine harvesting vessels based on this rule compared to last season, from 2007 through 2011 the average coastwide annual ex-vessel revenue was \$12.5 million; therefore, at current ex-vessel price per mt, the HG for 2013 should provide similar revenue to the five years preceding 2012. Furthermore, as occurred in 2012, unused sardine from the potential EFP or the release of any unused portion of the 6,000-mt set-aside for the Quinault Indian Nation might be used to supplement the amount available to the directed fishery during the third allocation period (September 15 through December 31), thereby slightly increasing the potential revenue to the fleet.

Additionally, revenue derived from harvesting Pacific sardine is typically only one factor determining the overall revenue for a majority of the vessels that harvest Pacific sardine; as a result, the economic impact to the fleet from this action cannot be viewed in isolation. From year to year, depending on market conditions and availability of fish, most CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and in particular squid, making Pacific sardine only one component of a multi-species CPS fishery. For example, market squid have been readily available to the fishery in California over the last three years with total annual ex-vessel revenue averaging approximately \$66 million over that time, compared to an annual average ex-vessel from sardine of \$16 million over that same time period. Additionally, many sardine vessels that operate off of Oregon and

Washington also fish for salmon in Alaska or squid in California during times of the year when sardine are not available.

These vessels typically rely on multiple species for profitability because abundance of sardine, like the other CPS stocks, is highly associated with ocean conditions and different times of the year, and therefore are harvested at various times and areas throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore, as abundance levels and markets fluctuate, it has necessitated that the CPS fishery as a whole rely on a group of species for its annual revenues. Therefore, although there will be a potential reduction in sardine revenue for the small entities affected by this action as compared to the previous season, it is difficult to predict exactly how this reduction will impact overall annual revenue for the fleet.

There are no significant alternatives to this action that would accomplish the objectives of the Magnuson-Stevens Act and would also minimize any significant economic impact of this action on the affected small entities. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific sardine fishery based on the harvest formula in the FMP. The harvest formula is applied to the current stock biomass estimate to determine the HG. Therefore, if the estimated biomass decreases or increases from one year to the next, the HG will necessarily decrease or increase too. Because the current stock biomass estimate decreased from 2012 to 2013, the HG also decreased. Determining the annual HG merely implements the established procedures of the FMP with the goal of continuing to provide expected net benefits to the

nation, regardless of what the specific allowable harvest of Pacific sardine is determined to be for 2013.

There are no reporting, record-keeping, or other compliance requirements required by this rule. Additionally, no other Federal rules duplicate, overlap, or conflict with this rule.

#### Small Business Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a notice to fishermen that also serves as a small entity compliance guide (guide) was prepared and

will be distributed to fishermen and processors. The guide is also available on the internet at <http://swr.nmfs.noaa.gov>. Copies of this final rule and guide, i.e., the notice to fishermen, will be available upon request from the Southwest Regional Office (see ADDRESSES).

Authority: 16 U.S.C. 1801 et seq.

Dated: June 11, 2013

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
performing the functions and duties of the  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

[FR Doc. 2013-14335 Filed 06/14/2013 at 8:45 am; Publication Date:  
06/17/2013]